IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

WP(C).No. 27597 of 2006(I)

PETITIONER:

N.V.MARTIN,
NEDUNGADAN HOUSE,
POST ANGADI, ANGAMALY.

BY ADV. SRI.P.SANJAY
SRI.A.PARVATHI MENON

RESPONDENTS:

1.STATE OF KERALA,
REP. BY ITS SECRETARY,
DEPARTMENT OF LOCAL SELF DEPARTMENT,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

2.KARUKUTTY GRAMA PANCHAYATH,
REP. BY THE SECRETARY,
KARUKUTTY GRAMA PANCHAYATH.

3.THE PRESIDENT,
KARUKUTTY GRAMA PANCHAYATH.

* ADDL.R4.P.V.DEVASSY, S/O.VARKEY, AGED 69 YEARS,
PUTHUSSERI HOUSE, AAZHAKAM P.O.,
MUKKANNUR, K.P.G.NAGAR, ERNAKULAM.

*ADDL.R5.P.D.VARGHESE, S/O.P.V.DEVASSY, PUTHUSSERI HOUSE,
AAZHAKAM P.O., MUKKANNUR, K.P.G.NAGAR, ERNAKULAM.

**ADDL.R6.K.K.SHIBU, THE PRESIDENT, KARUKUTTY GRAMA PANCHAYAT.

*ADDL.R4 AND R5 ARE IMPLEADED AS PER THE ORDER DATED 12.12.2006 IN I.A.NO.17042/06.

**ADDL.R6 IS IMPLEADED AS PER THE ORDER DATED 9.1.2007 IN I.A.NO.467/07.

R2, R3 & R6 BY ADV. SRI.V.S.CHANDRASEKHARAN
R4 & R5 BY ADV.SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/01/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C)No.27597 of 2006

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Dated: 23rd January, 2007

JUDGMENT

The petitioner who has been running a Small Scale Industrial Unit manufacturing and selling hand made fire crackers-Chinese crackers-has filed this Writ Petition seeking a writ of mandamus commanding respondents 2 and 3, the Karukutty Grama Panchayat and its President to grant licence under the Panchayat Raj Act to his fire cracker manufacturing unit on the basis of Exts.P5 and P7. Another relief which is sought for in the Writ Petition is a Writ of Prohibition restraining the respondents from interfering with his business until licence is issued to him. He has also sought for a declaration that he is entitled to continue his business in view of the fact that no action was taken on his application within the time prescribed by law. Ext.P2 produced along with the Writ Petition is the explosive's licence which was issued to him by the Additional District Magistrate (A.D.M.) under the Arms and Explosives Act and Ext.P1 is copy of the site plan of the manufacturing unit of the petitioner approved by the Senior Environmental Engineer. The petitioner claims that the Chinese crackers which are being manufactured by him are the least hazardous and are commonly used in festivals. He also claims that his unit is situated in a desolate place within the limits of

the Panchayat. Ext.P3 is copy of the licence application dated 5.2.2002 which is submitted before the 2nd respondent-Panchayat. The petitioner complains that no action was taken by the Panchayat within the statutory period on Ext.P3. But instead of refusing in granting the licence sought for, the 2nd respondent issued Ext.P4 letter dated 15.4.2002 stating that the Panchayat sought for a clearance certificate from the A.D.M. The petitioner then and there explained to the Panchayat that since Ext.P2 licence itself was issued by none other than the A.D.M., there is no necessity for issuing any further clearance certificate. No communication was received from the Panchayat in the matter following Ext.P4. During the subsequent years also on due dates the petitioner made applications for renewal of licence. On those applications also the Panchayat did not take any action and the petitioner had been operating the unit on the basis of the deeming provisions under the Kerala Panchayat Raj Act. But when the petitioner made an application for licence for the period 2006-07 vide Ext.P5, the Panchayat issued Ext.P6 communication dated 25.9.2006. Under Ext.P6 the Panchayat requested the petitioner to produce as many as five documents. On receiving Ext.P6 the petitioner submitted all the documents mentioned in Ext.P6 except

clearance certificate issued by the Department of Fire. Ext.P7 is copy of the covering letter submitted by the petitioner before the Secretary of the Panchayat. As regards clearance certificate from the Department of Fire, the petitioner pointed out that explosive licence had been issued to him by the A.D.M. after a thorough enquiry through Revenue, Police and Fire Force Department and on the basis of such enquiry No Objection Certificate was issued from the licensing authority and therefore no further clearance is required from any of those departments. In fact the petitioner approached the Fire Force Department for a further clearance certificate on noticing Ext.P6. But that department has taken the stand that clearance certificate will be forwarded only to the licensing authority and in the case of the petitioner such a certificate had already been given to the licensing authority during the process of granting licence and further certificate will not be granted without any sufficient reason or direction from the A.D.M. The Fire Department actually provided the petitioner with reference number in the certificate so that the same can be used anywhere to denote that clearance has been granted by that department. After submitting the documents the petitioner approached the Panchayat on 9.10.2006 for enquiring as to the

decision taken on Exts.P5 and P7. But on seeing the petitioner, the third respondent (the President of the Panchayat) became irritated and asked the petitioner as to why he was there. The petitioner would request the third respondent to grant licence without further delay and thereupon the third respondent would openly declare that there was no question of granting licence to the petitioner so long as he adorned the chair of the President of the Panchayat. The third respondent even declared that he would see that the petitioner's industry is closed down. The petitioner submits that his enquiry revealed that the Committee of the Panchayat had not even considered or met to discuss the issue of granting licence to the petitioner. He alleges that the stand of the President of the Panchayat is oppressive in nature and is the result of extraneous considerations. According to him, he has no other means to eke out his livelihood. He points out that his business prospers only during festival seasons and he apprehends that respondents 2 and 3 may at any time interfere and stop the functioning of his unit on the strength of some illegal orders. On the above facts and on the various grounds raised in the Writ Petition, he has filed the Writ Petition seeking the reliefs already indicated.

2. On the basis of the impleadment applications filed, one P.V.Devassy and P.D.Varghese, residents of the Karukutty Grama Panchayat who along with others had filed representations to the Panchayat against the functioning of the unit were impleaded as additional respondent Nos.4 and 5 in the Writ Petition. Thereafter on the basis of I.A.No.467/07, Mr.K.K.Shibu,the President of the Panchayat was impleaded as additional 6th respondent in the Writ Petition.

3. The second respondent, the Secretary of the Panchayat has filed a counter affidavit on 7.12.2006 on his behalf and also on behalf of the third respondent. It is contended therein that the crackers manufactured by the petitioner are hazardous, most explosive and dangerous items. Any explosion in the unit is likely to cause death of several persons. It is without obtaining licence from the Panchayat that the petitioner is conducting the unit. It is stated that Ext.P3 application was submitted in the year 2002 and thereafter the Panchayat had issued Ext.P4 notice to the petitioner. It is however asserted that no licence has ever been issued by the Panchayat on the basis of Ext.P3 application and the continuance of the unit by the petitioner was illegal. The third respondent received a mass petition

dated 22.2.2006 signed by 27 persons including P.D.Varghese complaining about the illegal functioning of the fire cracker unit of the petitioner. Ext.R2a is copy of that mass petition. While Ext.R2a enquired into, it was revealed that the petitioner was conducting the unit illegally and therefore Ext.R2b stop memo was issued. Ignoring Ext.R2b the petitioner is continuing to run the unit. Therefore on 10.7.2006 the Committee of the Panchayat unanimously decided to take action against the petitioner for the illegal functioning of the unit. Ext.R2c is the resolution of the Panchayat dated 10.7.2006. On the basis of Ext.R2c the Panchayat issued Ext.R2d letterl to the S.I. of Police for taking appropriate action for the illegal functioning of the unit. The counter affidavit states that after the enquiry by the Police on the basis of Ext.R2d letter, the petitioner submitted an application for licence on 25.7.2006 before the Panchayat copy of which is produced as Ext.R2e(Ext.R2e is the copy of Ext.P5 itself). Also produced along with the counter affidavit is Ext.R2f which is copy of yet another mass petition dated 7.8.2006 against the functioning of the unit. Ext.R2g is copy of the letter which was given to the petitioner on 11.8.2006 since along with Ext.R2e the petitioner had not produced the relevant document. In spite of Ext.R2g the

petitioner neither submitted the relevant documents nor stopped the illegal functioning of the unit. Therefore the Panchayat decided to move the Home Minister, the D.G.P., the District Collector and the Superintendent of Police. Ext.R2h is copy of the decision of the Panchayat in that regard and on the basis of Ext.R2h necessary lettersl were sent to the Minister and others. It is further stated in the counter affidavit that the Panchayat again sent letter to the petitioner on 25.9.2006 directing the petitioner to produce documents for considering his licence application. Ext.R2i is copy of that letter (Ext.R2i is copy of Ext.P6). Against Ext.R2j covering letter the petitioner produced documents. It is alleged that going by the documents produced by the petitioner he did not have the ownership over the property in respect of which licence had been given by the A.D.M. Ext.R2k produced along with the counter affidavit is copy of the consent to operate industrial plant issued by the Pollution Control Board to the petitioner. It is pointed out that as per Ext.R2k, 15 conditions are to be complied with by the petitioner. Ext.P2 licence of the A.D.M. was subject to 26 conditions. That portion of Ext.P2 incorporating the conditions were not produced by the petitioner deliberately. Ext.R2l is copy of the conditions which were attached to

Ext.P2. The petitioner has not complied with any of the conditions in Ext.R2l. He has only constructed five temporary sheds in the property. These sheds are not sufficient to prevent explosion. There are residences within 100 meters away from the petitioner's unit and the existence of the unit is very dangerous and hazardous for the people who are residing in those residences. Huge quantity of highly explosive crackers are being manufactured by the petitioner without taking any safety measures. The possibility for explosion in the petitioner's unit is very high and the Panchayat being a local authority is anxious about the safety of the general public living within the area of the Panchayat. The action of the petitioner in conducting the unit without obtaining licence from the Panchayat amounts to nuisance and causes danger to the general public.

4. A counter affidavit has been filed on behalf of additional respondents 4 and 5 wherein they inter alia contend that Ext.P2 licence issued by the A.D.M. is not sufficient for conducting the unit for manufacturing fire crackers. They have produced Exts.R4(a) and R4(b), copies of two mass petitions submitted by the residents of the local against the functioning of the unit. Stop memo was issued by the 2nd respondent after being convinced about the genuineness of

the grievance. Even after the issuance of the stop memo, the unit is continuing with illegal manufacturing of fire crackers. The conditions imposed by the A.D.M. and the Pollution Control Board are not being complied with. The petitioner is stocking huge quantity of gunpowder without providing any safety measures and also used to test fire crackers in the unit every now and then and this is generating considerable air and sound pollution in the locality. Chances of hazardous explosion is imminent. The waste from the unit is being discharged to the nearby paddy fields and water sources resulting water pollution. High power electric lines have been drawn over the unit which causes chances of breakage of power lines during the test firing of crackers.

5. The President of the Panchayat, Mr.K.K.Shibu who was impleaded eo-nominee has filed a detailed counter affidavit in which he denies the allegations of hostile attitude, mala fides etc. raised by the petitioner against him. The allegation in the affidavit in support of the impleadment application that under the leadership of the President of the Panchayat some men ransacked the unit of the petitioner in the night of 24.12.2006 and destroyed all the materials therein are denied. It is claimed that he has not done anything

against the interim order passed by this court. He is obeying and will continue to obey the directions and the orders issued by this court with due respect and in proper spirit. It is then contended that it is a large scale fire cracker manufacturing unit which is being conducted by the petitioner illegally. The crackers which are being manufactured in the unit is hazardous, most explosive and dangerous items. The unit is being conducted without licence. The counter affidavit endorses all the contentions raised in the counter affidavit already submitted by respondents 2 and 3 and seeks dismissal of the Writ Petition.

6. Very elaborate submissions were addressed before me by Mr.P.Sanjay, learned counsel for the petitioner and Mr.V.S.Chandrasekharan who appeared not only for respondents 2 and 3 but also for additional 6th respondent. My attention was drawn to the various documents placed on record. I also heard Smt.C.M.Charisma on behalf of respondents 4 and 5. She would make submissions on the basis of the counter affidavit submitted by respondents 4 and 5.

7. Mr.Chandrasekharan, counsel for the Panchayat would submit that the petitioner cannot be permitted to conduct the unit

which has high potentials of immediate risk to human lives apart from the risks arising out of air, water and sound pollution which is being generated by the unit especially since it is conceded that he has not so far been issued with a licence by the local authority in terms of the provisions of the Kerala Panchayat Raj Act. Counsel submitted that the unit is now being conducted by the petitioner not in the property in respect of which Ext.P2 licence has been issued by the A.D.M. but in other properties situated in thickly populated areas. The conditions attached to the consent issued by the Pollution Control Board and the conditions which are attached to Ext.P2 itself are being blatantly violated by the petitioner. Continuance of the interim order passed by this court while entertaining the Writ Petition pose danger to the inhabitants of the Panchayat and the same should be vacated forthwith. The Panchayat has already sent orders to the petitioner rejecting the licence application even for a minute the interim order can be allowed to continue.

8. Mr.P.Sanjay, counsel for the petitioner would refute the submissions of Mr.Chandrasekharan. According to him, the conditions imposed by the Pollution Control Board while granting consent to operate are being faithfully complied with. So also the conditions

which are attached to Ext.P2 licence are being obeyed. The issue which is now raised by the Panchayat on the basis of the survey numbers shown in the title document is a silly one. The unit stands actually established in the survey number mentioned in Ext.P2 itself though it is true that the title documents relate to the properties in other survey numbers also. All safeguards for averting any danger to the neighbouring public have been taken. Ext.P1 will show that in the immediate vicinity of the sheds were actual manufacturing is being conducted there are no residences. It is only Chinese crackers of the permitted quantity which are being manufactured. Chinese Crackers are only Olapadakkams and they will not cause any danger. They are being used commonly in Ulsavaparambas and houses even by small children. No untoward instances involving any injury to anybody has so far been reported even though the unit had been functioning for so many years now. It is on an extraneous considerations and due to egoistic problems that the additional 6th respondent has moved against the petitioner and his unit. Learned counsel finally conceded that during the pendency of the Writ Petition, he has been served with a copy of the decision taken by the Panchayat rejecting the petitioner's application for licence.

9. Since it was conceded before me by the learned counsel for the petitioner that the petitioner has been served with a copy of the order rejecting the application for licence, the petitioner is to be relegated to his statutory appellate remedy against that order. But I feel that in view of the facts which have emerged from the pleadings raised and the documents on record, there is justification for permitting continuance of the status quo order on condition that the petitioner complies with all the conditions which are attached to the consent issued by the Pollution Control Board and the licence issued by the A.D.M. I am not very much impressed by the contention of the Panchayat that the petitioner does not have title over the property in question. In fact the title deeds takes in survey numbers mentioned in Ext.P2 while Ext.P2 takes in other survey numbers also. The Writ Petition will stand disposed of without entering any findings regarding the merits of the petitioner's entitlement for a licence with the following directions:

The status quo obtaining as on today will continue on condition that the petitioner confines his activities in the survey numbers mentioned in Ext.P2 alone subject to the following conditions:

1. The petitioner will confine his manufacturing activities to the

property in survey No.447/9 of Karukutty Village, Aluva Taluk, Ernakulam.

2. The sheds/buildings in which the petitioner will have permission to manufacture Chinese crackers or Olapadakkam only.

3. The total quantity to be manufactured will be 15 Kgs. and the petitioner shall not be entitled to have any manufacturing activities other than Chinese crackers.

4. All the conditions which are attached to Ext.P2 as discernible from Ext.R2(l) shall be faithfully complied with by the petitioner.

5. The petitioner shall also comply with all the conditions in Ext.R2(k) consent issued by the Pollution Control Board.

6. The Senior Engineer attached to the Pollution Control Board will conduct periodical inspections and ensure that the conditions attached to Exts.R2(k) and R2(l) are not being violated by the petitioner.

The order directing maintenance of status quo subject to the above conditions will continue for a period of four months from today. If the petitioner prefers an appeal against the order passed by the Panchayat rejecting his application for licence before the Tribunal for Local Self Government Institutions, the Tribunal will entertain that

appeal as one filed in time and dispose of the same in accordance with law. The petitioner will implead additional respondents 4 and 5 also as parties in the appeal and the Tribunal will issue notice to them also before a final decision is taken.

srd **PIUS C.KURIAKOSE, JUDGE**